

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-00090-FDW
(3:12-cr-00228-FDW-1)**

TONY HUMPHREY,)	
)	
Petitioner,)	
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	<u>ORDER</u>
)	
Respondent.)	
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THIS MATTER is before the Court on the Government’s Motion to Hold Petitioner’s Motion to Vacate in Abeyance. [Doc. 29].

On June 14, 2016, Petitioner filed an Amended Section 2255 Motion to Vacate Sentence. [Doc. 10-1]. This matter was stayed pending issuance of the mandate by the Fourth Circuit Court of Appeals in United States v. Taylor, No. 19-7616, which held that attempted Hobbs Act robbery is not a crime of violence under the force clause of 18 U.S.C. § 924(c)(3)(A), Taylor, 979 F.3d 203 (4th Cir. 2020). [Doc. 28]. The Fourth Circuit issued its mandate in Taylor on December 21, 2020, after the United States unsuccessfully sought rehearing en banc. The Acting Solicitor General of the United States is currently considering whether to file petition for certiorari in Taylor. [Doc. 29 at 3].

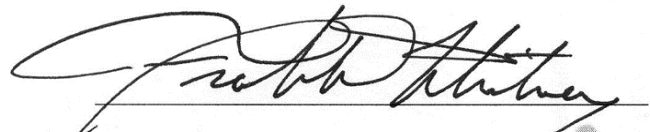
The Government now requests that this matter be held in abeyance pending the filing of a petition for certiorari, the United States’ acquiescence in a defendant-filed petition that presents the same issue, or the decision of the Acting Solicitor General not to file a petition for certiorari, whichever occurs first. [Doc. 29 at 1]. Petitioner does not consent to the Government’s motion. [Id. at 4].

The Court will grant the Government's request to stay this matter in accordance with the Government's request and will order the Government to notify the Court within seven (7) days once one of the three events occurs. At that time, the Court will issue an order directing further action of the parties.

IT IS, THEREFORE, ORDERED that the stay in this matter pending the issuance of the mandate in Taylor is hereby **LIFTED**, and this matter is hereby **STAYED** pending the filing of a petition for certiorari in Taylor, No. 19-7616; the United States' acquiescence in a defendant-filed petition that presents the same issue; or the decision of the Acting Solicitor General not to file a petition for certiorari, whichever occurs first.

IT IS FURTHER ORDERED that the Government shall have seven (7) days from the occurrence of one of these three events, whichever is first, to notify the Court of such.

Signed: February 3, 2021


Frank D. Whitney
United States District Judge